



State of Arizona Accounting Manual

Topic 55 Payroll and Personnel

Issued 07/01/16

Section 09 State Employees Serving as Board Members

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INTRODUCTION

The Government of the State of Arizona has a large number of assemblies, which are formally constituted and periodically convened, and which are comprised of persons who have been appointed to provide advisory, deliberative, consultative, administrative, executive, managerial, supervisory, oversight, governance, and/or investigatory services within their areas of expertise. Such an assembly may be known as a board, commission, committee or council, but, whatever its legal title, will be referred to as a "board" in this section of SAAM, and one who serves on a board, in other than a regular full-time or part-time employment capacity, will be referred to as "board member."

Statutes related to service on a board may provide a form of compensation, a "fee," for participating in board meetings and related board activities. The wording of the statutes governing such fees differs between boards.

Some statutes state that the board member "shall receive" or that the board "shall pay" a given fee or use words to that effect. This wording implies that the payment of the fee and the receipt thereof is "mandatory."

Other statutes state that the board member is "eligible to receive" or use similar wording. Such phrasing implies that the acceptance of a fee by the member is "discretionary" and, while the board may be compelled to offer a fee, it may not actually have to pay one and the member may not be required to accept a fee if offered.

Finally, other statutes state that the member "shall not receive compensation" for his service or are silent with respect to the payment of any fee to board members. The payment of a fee in both of these situations is "prohibited."

State employees, because of their familiarity with State government and/or because of their expertise in a particular field, are not infrequently asked to serve and do serve as members of boards. However, since a State employee is already employed by an agency, the "employing agency," the employee's acceptance of an appointment to a board constitutes employment at more than a single agency and, depending upon the employee's status under the Fair Labor Standards Act (FLSA), raises certain questions related to the fee that accompanies board service and the compensation the employee receives from his employing agency.

This section of SAAM deals with the matters arising from this dual service situation.

FLSA identifies two (2) major categories of employees:

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- Those who, because of their duties or level of pay, do not receive additional compensation, compensatory time, or an overtime premium (“time and a half”) for hours worked in excess of forty (40) hours in a workweek for a single employer. These employees are known as “exempt.” Exempt employees may be required to work more than forty (40) hours or five (5) days in a workweek without receiving additional compensation
- Those who do receive additional compensation, an overtime premium (“time and a half”), or some other FLSA-prescribed consideration for hours worked in excess of forty (40) hours in a workweek for a single employer. These employees are known as “non-exempt.”

Service by a State employee as a member of a board frequently involves an employee’s working more than forty (40) hours in a workweek.

An exempt employee may work more than forty (40) hours in a workweek without added compensation; because of this, additional hours that may be worked for the State in any capacity are generally not compensable.

With respect to a non-exempt employee, FLSA (Sec. 207(p)(2)) states that the hours worked for a board are not added to the hours worked for the employing agency for the purpose of computing overtime compensation.

Moreover, both exempt and non-exempt government employees, when serving as board members, are subject to a special provision FLSA. According to FLSA (Sec. 203(e)(4)(A)(i)&(ii)), an individual who is employed by a government agency and who is offered “a nominal fee” for serving on a board may be treated as a volunteer, rather than as an employee. While this has no actual effect on an exempt employee, for a non-exempt employee, this means that, for services as a member of a board, no additional compensable hours are accumulated.

The following policies are based, in part, upon the principles presented above.

POLICIES

1. A State employee whose regular and principal employment with the State is with an agency (“employing agency”) rather than as a member of a board or commission (“board”) may, subject to the provisions contained herein, serve as a member of a board.
2. Before accepting an appointment to serve as a member of a board, such employee must file an appropriate notice of secondary employment with his employing agency. The employing agency may disallow the employee’s acceptance of a tendered appointment for any valid reason including, but not necessarily limited to:
 - 2.1. An actual or potential conflict of interest.

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- 2.2. Operational issues, such as anticipated schedule conflicts between board and employing agency duties.
3. Any State employee may accept the reimbursement of actual expenses by a board as may be allowed by statute, rule or policy.
4. Before a newly appointed board member who is an employee of a State agency is to attend his first board meeting or perform some other duty for the board to which he has been appointed the board and the board member shall determine:
 - 4.1. Whether payments to the board member are mandatory, discretionary or prohibited, as described in the Introduction.
 - 4.2. Whether, he is, with respect to his employing agency, exempt or non-exempt.
5. If the payment of a board member fee, as is presented in the Introduction, is:
 - 5.1. Mandatory—the board must pay and the employee must accept the legally mandated fee for serving on the board.
 - 5.2. Discretionary—the board may not pay and the employee may not accept a fee for serving on a board.
 - 5.2.1. If the employee is exempt, the board may not pay and the exempt employee may not accept a fee for serving on a board.
 - 5.2.2. If the employee is non-exempt, at the employee's discretion, the board may pay and the employee may accept a fee for serving on a board.
 - 5.2.2.1. The non-exempt employee's acceptance of the member fee disqualifies him from receiving any additional compensation from the board or accumulating any additional compensable hours for performing services in the capacity of board member.
 - 5.2.2.2. A non-exempt employee who rejects a fee must formally relinquish any compensation from the board to which they might otherwise be entitled by filing with GAO Central Payroll a "Board Member Request to Relinquish Compensation" form (available from GAO Central Payroll upon request).
 - 5.3. Prohibited—the board may not offer or pay and an employee may not accept fee for serving as a member of a board.
 - 5.3.1.1. The non-exempt employee may not receive additional compensation from the board or accumulate any additional compensable hours for performing services in the capacity of board member.
 6. Refer to SAAM 5507 for information regarding employment at multiple agencies in capacities other than as a member of a board.